In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1427

A. T. GARRETT, W. D. WALTERS AND
J. B. MCDANIEL, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners were mechanics employed by Eastern Airlines at its repair and overhaul assembly facility in Atlanta, Georgia. The United States brought actions against them under 49 U.S.C. 1471(a), seeking civil penalties for their alleged violations of their statutory and regulatory [1] obligation to follow the in-

[1] The relevant statutory and regulatory provisions upon which petitioners' liability was based are set forth in the Appendix to the Petition at pp. 14a, 16a, 20a.

structions set out in an Eastern Airlines maintenance manual in repairing an airplane propeller. After a hearing, the United States District Court for the Northern District of Georgia issued a comprehensive opinion finding that petitioners had committed the alleged violation; because the violations were of limited scope and caused no harm, it imposed a civil penalty of only $100 on each.[2] The court of appeals affirmed *per curiam*, relying upon the opinion of the district court which it annexed as an appendix (Pet. App. A 1a, 2a-8a). The court of appeals denied a petition for a rehearing on January 19, 1970 (Pet. App. A 10a). The petition for a writ of certiorari in this Court was filed April 15, 1970.

In opposing that petition, we rely—as did the court below—on the comprehensive opinion of the district court, which made detailed findings of fact and conclusions of law in support of its determination of liability (Pet. App. A 2a-8a). We deem it appropriate, however, to respond to certain allegations petitioners develop in the petition.

1. As to the claim that the Federal Aviation Administrator chose the wrong statutory remedy, we note that this issue was only tangentially referred to in the district court and not raised before the court of appeals. In these circumstances, there is no reason for this Court to reach this contention. In any

[2] The maximum penalty under the statute is $1,000. At the government's suggestion at the conclusion of the evidence, the district court found that another line mechanic, Petsch, was not involved directly or indirectly in the violation and dismissed the case against him (Pet. App. A 7a-8a).

event, the Administrator is afforded wide statutory discretion as to the choice between the civil penalty of 49 U.S.C. 1471, invoked here, and the decertification procedures of 49 U.S.C. 1429,[3] which petitioners assert should have been employed. See 49 U.S.C. 1421. Because the latter procedure generally has a more drastic impact,[4] the civil penalty procedure is usually employed where, as here, the underlying violation is relatively less important.

2. Petitioners' principal contention is that the Administrator has improperly delegated authority to the air carriers by adopting regulations (14 C.F.R. 43.13(c)) which in effect adopt the maintenance manual procedures and techniques of a certificated air carrier or commercial operator as mandatory under the statute unless contrary notification is given. As the district court pointed out (Pet. App. A 6a-7a), the claim is insubstantial. The statute (49 U.S.C. 1421) empowering the Administrator to prescribe, *inter alia*, "[r]easonable rules and regulations

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[3] These provisions are set out in the Appendix to the Petition at pp. 11a-14a, 16a.

[4] If the Administrator had proceeded under Section 1429, he could have done so only as to petitioners Garrett and McDaniel (since they and not Walters were certificated mechanics); but the outcome for Garrett and McDaniel could have been withdrawal or cancellation of the individual licenses, which would have precluded them from working at their trade for so long as the Administrator deemed appropriate. Under the instant proceeding, petitioners were subjected to penalty but their licenses were in no way affected; they were thus not deprived of their status as licensed mechanics or the opportunity to work.

and minimum standards governing, in the interest of safety, (A) the inspection, servicing, and overhaul of aircraft, aircraft engines, propellers, and appliances," cannot be read as a direction that the Administrator *himself* issue the minute regulations required for maintenance and overhaul of different aircraft and their many parts. The delegation of this task to the air carriers themselves, which may be deemed to have great familiarity with the proper safety procedures for servicing their planes, is entirely reasonable. See Davis, *Administrative Law Treatise* §§ 2.01-2.07, 9.05, and cases cited.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1970.

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